IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORIGINAL SIDE

INCOME TAX APPEAL NO. 771 OF 2002

Navnitlal & Co. Appellant

vs.

Dy. Commissioner of Income-tax,
Special Range 30, Mumbai 20. Respondent

Ms.Asifa Khan i/b. Ms.Jyoti Dailani for the appellant.

CORAM : R. M. LODHA &
J.P. DEVADHAR,JJ.

DATED : 11th October 2004

P.C.

Heard.

2. The Income Tax appellate Tribunal in its order observed thus:

> "6. We have given a careful consideration to the rival submissions and the facts of the case in the light of the material presented before us. We are of the opinion that on the facts of the case the CIT was competent to pass the order u/s. 263 as the issue whether the gross financing charges or the net financing charges are to be included in the total turnover was not considered by the A.O. and this issue was not the subject matter of appeal before the CIT(A). The assessee had included only net financing charges in the total turnover whereas it should have included the gross financing charges in the total turnover. Thus, by doing so more deduction u/s.80HHC was allowed and thus the order of the A.O. became erroneous in so far as it was prejudicial to the interest of revenue. Even though the CIT(A) had dealt with the deduction

> u/s.80HHC but he had dealt with the same on different aspects. This issue pertaining to inclusion of financing charges in the total turnover was not considered at all by the CIT(A). We, therefore, hold that in view of Explanation (c) to Sec. 263, the CIGT was competent to pass the order u/s.263. ..... Thus, the assessee's own conduct shows that it had consciously included net financing charges in the total turnover and the assessee's contention that this was done by mistake is not tenable. In view of the clear finding given by the CIT that issue adjudicated upon by the CIT(A) will not be disturbed, it is clear that CIT had valid jurisdiction to revise the order of the A.O."

3. We do not find any infirmity in the consideration of the matter by the Income Tax Appellate Tribunal.

4. The judgment of Gujarat High Court in the case of Commissioner of Income-tax v. Shashi Theater Pvt.Ltd, 248 ITR 126 has no application in the facts and circumstances of the present case.

5. No substantial question of law arises.

6. Dismissed in limine.

(R.M. LODHA,J.)

(J.P. DEVADHAR,J.)